IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 790 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any OrdeJJJJ : NO

JJJJJ

Heard learned advocate Shri Dagli appearing for the petitioner and learned advocate Shri Trivedi for the respondent.

2. The petitioner-employer has challenged the validity of the award passed in Ref. No. 831/98 dated 19th April 2000 by the Labour Court, Vadodara.

3. The respondent was employed as a driver by the petitioner and he was dismissed from service by an order dated 27th August 1997 as the respondent had remained absent in an unauthorised manner from 3.6.96 to 28.7.96. The respondent had raised a dispute and ultimately the Labour Court, Vadodara, by the impugned award, directed that the respondent should be reinstated in service with 70 per cent backwages and with continuity of service. Being aggrieved by the said award, the petitioner has approached this Court.

4. Learned Advocate Shri Dagli appearing for the petitioner has submitted that the Labour Court ought not to have interfered with the order of dismissal especially in view of the fact that the respondent driver had remained absent from 3.6.96 to 28.7.96 without giving any intimation to the petitioner-employer. In the circumstances, the respondent was rightly dismissed from service. He has also submitted that on account of unauthorized absence of the respondent, working of the petitioner Corporation was adversely affected because the petitioner employer is providing transportation services to the people at large. In the circumstances, he has submitted that the impugned award should be quashed and set aside.

5. On the other hand, learned advocate Shri Trivedi appearing for the respondent has submitted that the respondent had met with an accident on 2.4.96 when he was performing his duties as a driver. The accident had not been caused on account of negligent or rash driving of the respondent. On account of the brain injuries suffered by the respondent as a result of the accident, the respondent had been admitted in a hospital. The respondent had remained in hospital as an indoor patient for some time. Intimation with regard to the accident had also been given to the petitioner-employer. In spite of the said fact, the petitioner had initiated departmental proceedings against the respondent and had dismissed the respondent by an order dated 27.8.97. He has admitted the fact that the respondent had worked for some time when he had remained unemployed and, therefore, according to him, even if some lesser backwages are

awarded, the respondent would not make any grievance, but the respondent should not be deprived of his bread and butter by dismissing him from service.

6. I have heard the learned advocates and have also perused the award and some of the relevant documents. It is not in dispute that the accident had taken place as the tyre of the vehicle, which was driven by the respondent, had bursted. The respondent was admitted as an indoor patient in a government hospital and a certificate with regard to the injuries sustained by him was produced before the petitioner employer. It appears that only on account of the injuries suffered by the respondent driver, he could not report for his duty. In my opinion, the only mistake which the respondent had committed was that he did not give intimation with regard to his serious sickness to the petitioner employer and remained absent even after giving intimation with regard to the accident which had taken place on 2.4.96.

7. Upon perusal of the impugned award, it appears that the Labour Court was absolutely justified in quashing and setting aside the order of dismissal as the respondent could not perform his duties on account of the injuries which he had suffered. It is also true that the respondent had worked for some time elsewhere after his service was terminated. Looking to the fact that the respondent could not report for duty on account of the circumstances which were beyond his control, in my opinion, the award passed by the Labour Court should not be interfered with. However, it appears that as the respondent had worked elsewhere during the pendency of the litigation, instead of awarding backwages to the extent of 70%, the respondent should be given backwages to the tune of 55%. The impugned award is modified accordingly.

8. The petition is allowed and rule is made absolute to the above extent with no order as to costs. It is hoped that the respondent shall be reinstated in service as soon as possible and his backwages shall also be paid as soon as possible.

(A.R. Dave, J.)

(hn)